
HOUSE BILL No. 1598

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-2.5-10-1; IC 8-3-1.7-2; IC 8-3-23; IC 8-14.5-2; IC 8-23-2-6.

Synopsis: Freight transportation districts. Authorizes counties to establish freight transportation districts. Authorizes a district to operate a freight transportation system. Authorizes the department of transportation (INDOT) to enter lease rental agreements with the transportation finance authority for projects within the districts. Authorizes INDOT to pay the lease rentals from sales tax revenues deposited in the industrial rail service fund. Redistributes 0.033% of the sales tax collections from the state general fund to the industrial rail service fund.

Effective: July 1, 2005.

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January 18, 2005, read first time and referred to Committee on Roads and Transportation.

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First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

HOUSE BILL No. 1598

A BILL FOR AN ACT to amend the Indiana Code concerning transportation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-2.5-10-1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) The department
3 shall account for all state gross retail and use taxes that it collects.

4 (b) The department shall deposit those collections in the following
5 manner:

6 (1) Fifty percent (50%) of the collections shall be paid into the
7 property tax replacement fund established under IC 6-1.1-21.

8 (2) Forty-nine and one hundred ~~ninety-two fifty-nine~~ thousandths
9 percent (~~49.192%~~) (**49.159%**) of the collections shall be paid into
10 the state general fund.

11 (3) Six hundred thirty-five thousandths of one percent (0.635%)
12 of the collections shall be paid into the public mass transportation
13 fund established by IC 8-23-3-8.

14 (4) ~~Thirty-three~~ **Sixty-six** thousandths of one percent (~~0.033%~~)
15 (**0.066%**) of the collections shall be deposited into the industrial
16 rail service fund established under IC 8-3-1.7-2.

17 (5) Fourteen-hundredths of one percent (0.14%) of the collections



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shall be deposited into the commuter rail service fund established under IC 8-3-1.5-20.5.

SECTION 2. IC 8-3-1.7-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) There is created a fund known as the industrial rail service fund. The fund shall consist of money distributed to the fund by IC 6-2.5-10-1 and IC 8-3-1.5-20. Amounts held in the fund may only be used to do the following:

(1) Provide loans to railroads that will be used to purchase or rehabilitate real or personal property that will be used by the railroad in providing railroad transportation services.

(2) Pay operating expenses of the Indiana department of transportation, subject to appropriation by the general assembly.

(3) Provide fifty thousand dollars (\$50,000) annually to the Indiana department of transportation for rail planning activities. Money distributed under this subdivision does not revert back to the state general fund at the end of a state fiscal year.

(4) Provide money for the high speed rail development fund under IC 8-23-25.

(5) Provide grants to a railroad owned or operated by a port authority established under IC 8-10-5.

(6) Make grants to a Class II or a Class III railroad for the rehabilitation of railroad infrastructure or railroad construction.

(7) To pay lease rentals for leases entered into for a project in a freight transportation district.

(8) To make grants to a freight transportation district under IC 8-3-23.

(b) A grant made under subsection (a)(5) may not exceed twenty percent (20%) of the gross sales and use tax receipts deposited in the fund under IC 6-2.5-10-1 during the fiscal year preceding the fiscal year in which the grant is made.

(c) A grant program under subsection (a)(6) must:

(1) provide a grant to a recipient of not more than seventy-five percent (75%) of the cost of the project; and

(2) require a grant recipient to pay for not more than twenty-five percent (25%) of the cost of a project.

(d) At least fifty percent (50%) of the gross sales and use tax receipts deposited in the fund under IC 6-2.5-10-1 during a fiscal year must be used for railroad projects (as defined in IC 8-3-23-5) in a freight transportation district under IC 8-3-23.

SECTION 3. IC 8-3-23 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

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Chapter 23. Freight Transportation Districts

Sec. 1. As used in this chapter, "board" means the board of trustees of a freight transportation district.

Sec. 2. As used in this chapter, "cost" as applied to a railroad or railroad project includes:

- (1) the cost of construction;
- (2) the cost of acquisition of personal property, capital stock, land, rights-of-way, property rights, easements, and interests;
- (3) the cost of demolishing or removing any buildings or structures on land acquired, including the cost of acquiring any lands to which buildings or structures may be moved;
- (4) the cost of relocating public roads and land;
- (5) the cost of easements;
- (6) the cost of all machinery and equipment, financing charges, and interest before and during construction and for not more than two (2) years after the estimated date of completion of construction;
- (7) the cost of engineering and legal expenses, plans, specifications, surveys, estimates of cost, traffic, revenues, and other expenses necessary or incident to determining the feasibility or practicability of constructing or acquiring a railroad project;
- (8) administrative expenses; and
- (9) other expenses necessary or incident to the construction or acquisition of the railroad project, the financing of the construction or acquisition, and the placing of the railroad project in operation.

Sec. 3. As used in this chapter, "district" means a freight transportation district established under this chapter.

Sec. 4. As used in this chapter, "freight transportation system" means any rail common carrier of freight for hire, the line, route, road, or right-of-way that crosses one (1) or more county boundaries and serves customers in more than one (1) county.

Sec. 5. As used in this chapter, "railroad project" includes any facilities, adjuncts, and appurtenances necessary to operate a railroad, such as lines, routes, roads, rights-of-way, easements, licenses, permits, tangible personal property, and real property. The term also includes all or a majority of the outstanding capital stock of a corporation that operates a railroad.

Sec. 6. As used in this chapter, "revenues" means all fees, tolls, rentals, gifts, grants, money, and other funds coming into the possession or under the control of a board under this chapter.

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1 **Sec. 7. (a) Subject to subsection (b), a county served by a freight**
 2 **transportation system and through which the line, road, route, or**
 3 **right-of-way of the system passes is a member of a freight**
 4 **transportation district. A district is composed solely of counties**
 5 **that are served by the freight transportation system and through**
 6 **which the freight transportation system passes.**

7 **(b) A county is a member of a district if that county's board of**
 8 **county commissioners adopted an ordinance authorizing the**
 9 **county's membership in the district under this chapter before**
 10 **January 1, 2007.**

11 **(c) A district is a distinct municipal corporation. A district**
 12 **includes all the territory of the counties that are members of the**
 13 **district and is coterminous with these counties.**

14 **Sec. 8. (a) A district is supervised and managed by a board of**
 15 **trustees, which consists of the following members:**

16 **(1) One (1) member from each county that is a member of the**
 17 **district, appointed by that county's board of county**
 18 **commissioners.**

19 **(2) One (1) member from each municipality through which**
 20 **the freight transportation system described in section 7(a) of**
 21 **this chapter passes, appointed by the executive of the**
 22 **municipality.**

23 **(3) One (1) member representing the rest of Indiana,**
 24 **appointed by the governor.**

25 **(4) One (1) member representing a nonprofit railroad**
 26 **museum located in a district.**

27 **(b) A member shall serve for a term of two (2) years from the**
 28 **beginning of the term for which the member was appointed and**
 29 **until a successor has qualified for the office. Each member shall**
 30 **serve at the pleasure of the appointing authority but is eligible for**
 31 **reappointment for successive terms.**

32 **(c) The members of the board shall elect for a one (1) year term:**

33 **(1) one (1) member as chairperson;**

34 **(2) one (1) member as vice chairperson;**

35 **(3) one (1) member as secretary; and**

36 **(4) one (1) member as treasurer.**

37 **Sec. 9. (a) The board may exercise the executive and legislative**
 38 **power of the district as provided by this chapter.**

39 **(b) The board shall hold regular meetings at least four (4) times**
 40 **a year and shall keep its meetings open to the public.**

41 **(c) Members of the board are entitled to reimbursement for**
 42 **traveling expenses and other expenses incurred in connection with**

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the members' duties, subject to state travel policies and procedures established by the budget agency, to be paid by the district. Members are also entitled to a salary per diem provided by IC 4-10-11-2.1(b) while performing their duties.

(d) A majority of the members appointed to the board constitutes a quorum for a meeting. The affirmative votes of a majority of the members are necessary for any action to be taken by the board.

Sec. 10. (a) The board has all powers reasonably necessary to carry out the purpose of this chapter, including the following powers:

(1) To receive federal, state, county, and municipal funds and private contributions and disburse them for the purpose of aiding freight transportation systems serving the district.

(2) To monitor and evaluate the use of funds granted or distributed by the district.

(3) To apply for federal, state, county, and municipal funds for the purpose of rendering assistance to freight transportation systems.

(4) To coordinate its plans and activities with:

(A) any public transportation authority serving one (1) or more counties that are members of the district;

(B) the Indiana department of transportation;

(C) regional planning commissions serving any part of the district; and

(D) units of county and municipal government included in the district.

(5) To purchase, lease, or lease with option to purchase capital equipment in aid of any freight transportation system operating in the district and to lease the equipment to the freight transportation system under conditions and for a term to be determined by the board.

(6) As a municipal corporation, to sue and be sued.

(7) To conduct public hearings to accomplish the purpose of this chapter.

(8) To seek and accept the assistance of any public agency or publicly funded agency in carrying out the board's functions and duties.

(9) To enter into agreements with either private or public agencies for any purpose required to accomplish the intent of this chapter.

(10) To set levels of service and rates, notwithstanding

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IC 8-3-1, for transportation of freight subject to section 16 of this chapter.

(11) To expend funds granted to the district from any source for the purpose of paying reasonable administrative expenses.

(12) To purchase, acquire, lease, or lease with option to purchase all or any part of the assets of a railroad that is providing freight transportation services within the district and to purchase or acquire all or any part of the issued and outstanding stock of a railroad that is providing freight transportation services within the district.

(13) To own all or any part of the capital stock or assets of a railroad that is providing freight transportation services within the district, and to operate either directly, by management contract, or by lease any railroad that is providing freight transportation services within the district.

(14) To acquire, lease, construct, maintain, repair, police, and operate a railroad and to establish rules for the use of the railroad and other properties subject to the jurisdiction and control of the board.

(15) To acquire and dispose of real and personal property in the exercise of its powers and the performance of its duties under this chapter.

(16) To lease to others for development or operation all or any part of a railroad on terms and conditions the board considers advisable.

(17) To make and enter into all contracts, undertakings, and agreements necessary or incidental to the performance of its duties and the execution of its powers under this chapter.

(18) To employ, subject to sections 18 and 19 of this chapter, an executive director or manager, consulting engineers, superintendents, and other engineers, construction and accounting experts, attorneys, and other employees and agents as are necessary and to fix their compensation.

(19) To negotiate and enter into agreements for railroad trackage rights regardless of the location of the track.

(20) To do all other acts necessary or reasonably incident to carrying out this chapter.

(b) If the board of trustees determines that the freight transportation system or the railroad owned by the district cannot continue to provide adequate transportation service, or the district is terminated, the board may, subject to the conditions of any state or federal grant used to purchase equipment or property, dispose

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of any property of the district.

(c) If the district is dissolved, the proceeds shall be paid to the state.

(d) In the exercise of any of the powers granted to the board in subsection (a), the board is not subject to any other laws related to commuter transportation systems or railroads.

Sec. 11. A freight transportation system receiving assistance from the district shall, as a condition of the grant:

(1) submit its operating budget for freight service rendered to the district for public hearings annually at least ninety (90) days before the beginning of the freight transportation system's fiscal year;

(2) permit the Indiana department of transportation to audit the financial books and records of the freight transportation system as the department would audit any intrastate railroad; and

(3) assume the responsibility for operation and maintenance of the equipment in accordance with a lease agreement executed between the freight transportation system and the district.

Sec. 12. (a) Any provision of this chapter in conflict with the Interstate Commerce Act of the United States or any other federal law or regulations governing transportation by common carrier is void, but all other provisions of this chapter shall be given effect if possible, without the provision or provisions voided.

(b) The board may eliminate service or reduce levels of service for the transportation of property only after obtaining approval by the Indiana department of transportation.

Sec. 13. The board of commissioners of any county located in the district may authorize the grant of funds to any freight transportation system serving or passing through the county for the purchase of equipment or other capital improvements. The grants shall be made to a district for distribution to the freight transportation systems or for purchases of equipment or capital improvements to be used on or by the freight transportation systems in connection with its public transportation operation.

Sec. 14. (a) A freight transportation system that receives aid from the district under this chapter must make its financial records available for inspection during normal working hours by a designated representative of the district.

(b) The district may provide any information to the general public that it develops from its review of the freight transportation

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1 system's financial records that relates to the qualification for
2 financial aid by that freight transportation system.

3 Sec. 15. (a) All money received by a district under this chapter:

4 (1) shall be considered to be trust funds to be held and applied
5 solely as provided in this chapter; and

6 (2) except as provided in subsection (c), may be invested
7 before the time when needed to the extent and in the manner
8 provided by IC 5-13-9, insofar as applicable.

9 (b) The funds shall be kept in depositories as selected by the
10 board in the manner provided by law.

11 (c) Proceeds received by a district from the sale of equipment in
12 a sale and leaseback transaction may be invested in or used to
13 purchase a guaranteed investment contract with an insurance
14 company whose long term indebtedness is rated in one (1) of the
15 two (2) highest categories by at least two (2) national rating
16 services. The guaranteed investment contract may not exceed the
17 term of the lease and may be assigned to secure performance of the
18 lease.

19 Sec. 16. (a) The board may exercise the power of eminent
20 domain to carry out this chapter and award damages to
21 landowners for real estate and property rights appropriated and
22 taken. If the board cannot agree with the owners, lessees, or
23 occupants of any real estate selected by the board for the purpose
24 set forth in this chapter, the board may proceed to procure the
25 condemnation of the property under IC 32-24.

26 (b) Relocation assistance under IC 8-23-17 shall be provided to
27 any person displaced under this section.

28 (c) If the property over and across which the railroad must be
29 constructed and must operate is already in use or acquired for use
30 for a public purpose, the public use or acquisition of the property
31 is not a bar to the right of the board to condemn the property for
32 the purpose of this chapter.

33 Sec. 17. (a) The exercise of the powers granted by this chapter
34 is in all respects for the benefit of the people of Indiana, the
35 increase of their commerce and prosperity, and the improvement
36 of their health and living conditions.

37 (b) As the operation and maintenance of a railroad project by
38 the board will constitute the performance of essential
39 governmental functions, the board shall not be required to pay any
40 taxes or assessments upon any railroad project or any property
41 acquired or used by the board under this chapter or upon the
42 income from the property.

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1 **Sec. 18. If a district acquires a freight transportation system and**
 2 **proceeds to operate the freight transportation system directly, by**
 3 **management contract, or by lease under this chapter, the**
 4 **employees of the freight transportation system shall be protected**
 5 **as follows:**

6 (1) The employees must be retained to the fullest extent
 7 consistent with sound management, and employees
 8 terminated or laid off must be assured priority of
 9 reemployment.

10 (2) The rights, privileges, and benefits of the employees under
 11 any pension or retirement plan are not affected, and the
 12 board shall assume the duties of the freight transportation
 13 system under the plan.

14 (3) The board shall act in a manner that ensures the
 15 continuing applicability to affected railroad employees of the
 16 provisions of all federal statutes applicable to them before
 17 April 1, 1984, and a continuation of the employees' collective
 18 bargaining agreements until the provisions of those
 19 agreements can be renegotiated by representatives of the
 20 board and the representatives of those employees duly
 21 designated under terms and provisions of the federal Railway
 22 Labor Act (45 U.S.C. 151 et seq.).

23 (4) The employees shall receive protection equally favorable
 24 to the employee conditions provided In the Matter of the New
 25 York Dock (360 I.C.C. 60), and a person with an employment
 26 relation with the commuter transportation system on April 1,
 27 1984, may not be deprived of employment or placed in a
 28 worse position by reason of the district's acquisition of a
 29 freight transportation system.

30 **Sec. 19. (a) A district shall request the attorney general to**
 31 **perform any legal services required in providing transportation**
 32 **service within the district. If the attorney general is unable to**
 33 **perform those services, the district may, with the attorney**
 34 **general's approval, employ an attorney.**

35 (b) The attorney general shall, to the extent feasible and upon
 36 request of the district, perform legal services for the district.

37 **Sec. 20. (a) A district shall request the state board of accounts**
 38 **to perform any auditing services required under this chapter in**
 39 **providing transportation service within the district. If the state**
 40 **board of accounts is not able to perform those services, the district**
 41 **may employ an auditor to perform audits for the district.**

42 (b) The state board of accounts shall, to the extent feasible and

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upon request:

- (1) perform auditing services for the district; and
- (2) consult with the district in acquiring auditing services.

Sec. 21. Any agreement between a district and a freight transportation system may include a provision that, with respect to assets owned by either party, property interests may be conveyed and responsibilities for operation and maintenance may be assigned to either party or jointly held and exercised by either party.

Sec. 22. Any financial or operating agreement between a district and a freight transportation system does not take effect until the Indiana department of transportation approves the agreement.

Sec. 23. (a) Before January 1 of each year, the district shall certify to the Indiana department of transportation that the district has taken action to provide financial responsibility against liability of the district under any agreement with a freight transportation system.

(b) Proof of financial responsibility under this section may be established by proof that:

- (1) a liability insurance policy is in force; or
- (2) a self-insurance program is in effect.

(c) The district shall participate, if feasible, in the programs established by the Indiana political subdivision risk management commission under IC 27-1-29.

Sec. 24. (a) The capital improvement contingency fund is established for the purpose of:

- (1) receiving grants, appropriations, and other revenues;
- (2) matching state or federal transportation grants made to permit the acquisition of capital assets;
- (3) acquiring capital improvements or assets; or
- (4) receiving, holding, and disbursing funds as a fiduciary.

(b) Money in the fund at the end of a fiscal year does not revert to the state general fund.

SECTION 4. IC 8-14.5-2-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 9. "Project" means any:

- (1) express highway;
- (2) superhighway;
- (3) state highway;
- (4) public highway;
- (5) road;
- (6) street;
- (7) motorway;

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- (8) bridge;
- (9) tunnel;
- (10) overpass;
- (11) underpass;
- (12) interchange;
- (13) entrance;
- (14) approach; or
- (15) other public way; or
- (16) railway improvement in a freight transportation district under IC 8-3-23;**

that the authority considers necessary or desirable for the operation of transportation systems. "Project" includes all land, rights-of-way, property, rights, easements, materials, and legal or equitable interests that may be acquired by the authority for the construction of the project.

SECTION 5. IC 8-14.5-2-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 12. "Transportation systems" means **any either of the following:**

(1) Facilities for the movement of vehicular traffic owned, leased, or operated by the state or the authority.

(2) A freight transportation system (as defined in IC 8-3-23-4).

SECTION 6. IC 8-23-2-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. (a) The department, through the commissioner or the commissioner's designee, may do the following:

(1) Acquire by purchase, gift, or condemnation, sell, abandon, own in fee or a lesser interest, hold, or lease property in the name of the state, or otherwise dispose of or encumber property to carry out its responsibilities.

(2) Contract with persons outside the department to do those things that in the commissioner's opinion cannot be adequately or efficiently performed by the department.

(3) Enter into:

(A) a contract with the Indiana transportation finance authority under IC 8-9.5-8-7; or

(B) a lease with the Indiana transportation finance authority under IC 8-9.5-8-8;

for the construction, reconstruction, improvement, maintenance, repair, or operation of toll road projects under IC 8-15-2 and toll bridges under IC 8-16-1.

(4) Sue and be sued, including, with the approval of the attorney general, the compromise of any claims of the department.

(5) Hire attorneys.

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(6) Perform all functions pertaining to the acquisition of property for transportation purposes, including the compromise of any claims for compensation.

(7) Hold investigations and hearings concerning matters covered by orders and rules of the department.

(8) Execute all documents and instruments necessary to carry out its responsibilities.

(9) Make contracts and expenditures, perform acts, enter into agreements, and make rules, orders, and findings that are necessary to comply with all laws, rules, orders, findings, interpretations, and regulations promulgated by the federal government in order to:

(A) qualify the department for; and

(B) receive;

federal government funding on a full or participating basis.

(10) Adopt rules under IC 4-22-2 to carry out its responsibilities.

(11) Establish regional offices.

(12) Adopt a seal.

(13) Perform all actions necessary to carry out the department's responsibilities.

(14) Order a utility to relocate the utility's facilities and coordinate the relocation of customer service facilities if:

(A) the facilities are located in a highway, street, or road; and

(B) the department determines that the facilities will interfere with a planned highway or bridge construction or improvement project funded by the department.

(15) Reimburse a utility:

(A) in whole or in part for extraordinary costs of relocation of facilities;

(B) in whole for unnecessary relocations;

(C) in accordance with IC 8-23-26-12 and IC 8-23-26-13;

(D) in whole for relocations covered by IC 8-1-9; and

(E) to the extent that a relocation is a taking of property without just compensation.

(16) Provide state matching funds and undertake any surface transportation project eligible for funding under federal law. However, money from the state highway fund and the state highway road construction and improvement fund may not be used to provide operating subsidies to support a public transportation system or a commuter transportation system.

(17) Enter into:

(A) a contract with the Indiana transportation finance

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1 authority under IC 8-14.5-4; or
 2 (B) a lease with the Indiana transportation finance
 3 authority under IC 8-14.5-5;
 4 for the construction, reconstruction, improvement,
 5 maintenance, repair, or operation of projects (as defined in
 6 IC 8-14.5-2-9) and transportation systems (as defined in
 7 IC 8-14.5-2-12) in a freight transportation district.
 8 (18) Enter into a contract with a freight transportation
 9 district to carry out the purposes of IC 8-3-23.
 10 (b) In the performance of contracts and leases with the Indiana
 11 transportation finance authority, the department has authority under
 12 IC 8-15-2, in the case of toll road projects and IC 8-16-1, in the case of
 13 toll bridges necessary to carry out the terms and conditions of those
 14 contracts and leases.
 15 (c) The department shall:
 16 (1) classify as confidential any estimate of cost prepared in
 17 conjunction with analyzing competitive bids for projects until a
 18 bid below the estimate of cost is read at the bid opening;
 19 (2) classify as confidential that part of the parcel files that contain
 20 appraisal and relocation documents prepared by the department's
 21 land acquisition division; and
 22 (3) classify as confidential records that are the product of systems
 23 designed to detect collusion in state procurement and contracting
 24 that, if made public, could impede detection of collusive behavior
 25 in securing state contracts.
 26 This subsection does not apply to parcel files of public agencies or
 27 affect IC 8-23-7-10.
 28 SECTION 7. [EFFECTIVE JULY 1, 2005] IC 6-2.5-10-1, as
 29 amended by this act, applies to state sales and use taxes collected
 30 after June 30, 2005.

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